

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13-10332
USDC No. 3:11-CV-1478

AUSTIN DYLAN EVERSOLE,

Petitioner-Appellant

v.

WILLIAM STEPHENS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

Austin Dylan Eversole, Texas prisoner # 1626507, moves for a certificate of appealability (COA) to appeal the district court's dismissal as time barred of his 28 U.S.C. § 2254 application challenging his conviction for murder, criminal solicitation to commit capital murder, burglary of a habitation, and theft of a firearm. Eversole argues that he was entitled to statutory or equitable tolling of the limitations period. Regarding statutory tolling, he contends that the law library did not have a copy of the AEDPA and that this deficiency was a state-created impediment to the timely filing of his § 2254 application. Further, Eversole argues that the limitations period should be equitably tolled based on his age. He asserts that the limitations period should not commence to run until

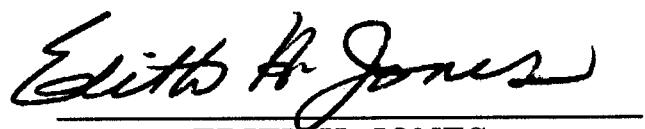
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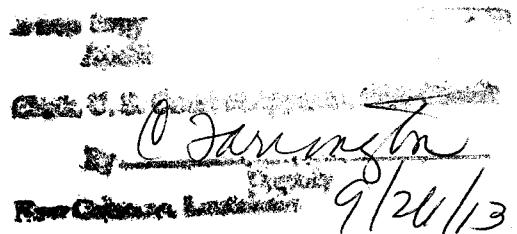
No. 13-10332

a minor reaches the age of 18.

To obtain a COA, Eversole must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Where the district court has denied federal habeas relief on procedural grounds, the applicant must demonstrate that reasonable jurists would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484. Eversole has not met this standard.

His motion for a COA is DENIED.


EDITH H. JONES
UNITED STATES CIRCUIT JUDGE


O. Johnson
9/20/13

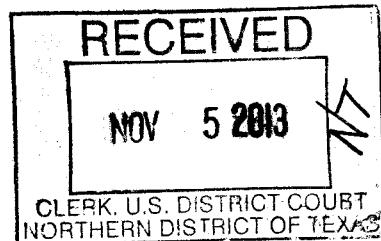
United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

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NEW ORLEANS, LA 70130

September 26, 2013

Ms. Karen S. Mitchell
Northern District of Texas, Dallas
United States District Court
1100 Commerce Street
Earle Cabell Federal Building
Room 1452
Dallas, TX 75242



No. 13-10332, Austin Eversole v. Wm Stephens, Director
USDC No. 3:11-CV-1478

Enclosed is a copy of the judgment issued as the mandate.

Record/original papers/exhibits are returned: 1 box - SCP.

The electronic copy of the record has been recycled.

(3) Volumes
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Sincerely,
LYLE W. CAYCE, Clerk

Claudia N. Farrington
By: Claudia N. Farrington, Deputy Clerk
504-310-7706

cc w/encl:

Mr. Austin Dylan Eversole
Ms. Jessica Michelle Manojlovich